

REMARKS

This responds to the Office Action mailed on August 16, 2005. Claim 15 and withdrawn claims 4 and 18 are amended, no claims are canceled, and no claims are added. Thus, claims 1-38 are currently pending. Of these currently pending claims, claims 3-5, 7-14, 17-19 and 23-38 currently stand withdrawn and claims 1-2, 6, 15, 16 and 20-22 are currently being examined.

Claim Objections

Claims 15-16 and 20 were objected to due to informalities. Applicant has amended independent claim 15 to recite --the flow controller-- rather than “the mass flow controller” in line 8. A flow controller was introduced in line 3 of claim 15. Applicant thanks the Examiner for identifying this inadvertent error. Applicant respectfully submits that the amendment to claim 15 does not change the intended scope of the claim. Withdrawal of the objection is respectfully requested.

§102 Rejection of the Claims

Claims 1 and 15 were rejected under 35 U.S.C. § 102(e) for anticipation by Simon et al. (U.S. 6,447,674). Applicant respectfully traverses for at least the following reasons.

Applicant thanks the Examiner for further clarifying the rejection in response to Applicant’s request in the previous Response. In Paragraph 4, the present Office Action indicates that a gate position sensor is disclosed in claim 8 lines 2-3, and infers that the sensor includes a transmitter in view of the signal transmission to the PLC (claim 8, lines 4-5). The Office Action further indicates that the PLC corresponds to the receiver.

FIG. 1, for example, of the present application illustrates a flow controller with a gate position sensor 116. The illustrated sensor 116 includes both a transmitter 134 and a receiver 138. Applicant respectfully submits that the position sensor recited in claim 8 of Simon is distinct from the PLC. The position sensor does not include the PLC. Thus, the position sensor does not include at least a receiver as identified in the present Office Action as the PLC.

Independent claim 1 recites a gate position sensor. With respect to claim 1, Applicant is unable to find, among other things, in the cited portion of Simon a gate position sensor

comprising a transmitter and a receiver, as recited in the claim. The recited transmitter transmits a signal in a flow controller, where a position of a gate in the flow controller affects the signal. The recited receiver receives the signal, where the receiver provides an indication of a gate position within the flow controller based on the signal received. Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claim 1.

Independent claim 15 recites a system comprising, among other things, a gate position sensor. The recited gate position sensor includes means for transmitting a signal in the flow controller and means for receiving the signal. Applicant is unable to find, among other things, in the cited portions of Simon a system that comprises a gate position sensor that includes both means for transmitting a signal and means for receiving the signal. Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claim 15.

Allowable Subject Matter

Claims 6 and 21-22 were allowed.

Claims 2, 16, and 20 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 2 depends on claim 1, which is believed to be in condition for allowance. Claims 26 and 20 depend on claim 15, which is believed to be in condition for allowance. Thus, Applicant respectfully requests allowance of claims 2, 16, and 20.

Consideration of Withdrawn Claims

Applicant respectfully requests consideration of all other species in Group I (withdrawn claims 3-5, 7-14, 17-21 and 23-25) upon the allowance of claim 1.

Reservation of the Right to Swear Behind References

Applicant maintains its right to swear behind any references which are cited in a rejection under 35 U.S.C. §§102(a), 102(e), 103/102(a), and 103/102(e). Statements distinguishing the claimed subject matter over the cited references are not to be interpreted as admissions that the references are prior art.

Final Status of Office Action

Applicant respectfully requests reconsideration and removal of the final status of the office action. MPEP 706.07 states: *Before final rejection is in order a clear issue should be developed between the examiner and applicant.* Applicant respectfully submits that the first office action did not clearly state the reasons for the rejection, and provide such information or references as may be useful in aiding Applicant to judge the propriety of continuing in the prosecution (*See 37 CFR §1.104(a)(2)*); nor did it clearly designate the particular part of the reference relied upon and the pertinence thereof with respect to the language of the claims (*See 37 CFR §1.104(c)(2)*). Thus, Applicant respectfully asserts that a clear issue was not developed pursuant to MPEP 706.07, and that the latest rejection was prematurely made final.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6960 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.


Respectfully submitted,

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By their Representatives,

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Date 10-12-05

By 
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 13 day of October, 2005.

KACIA LEE
Name


Signature